

**MINUTES
of the
FIRST MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**August 17, 2007
Room 322, State Capitol
Santa Fe**

The first meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee for 2007 was called to order at 10:00 a.m. by Speaker of the House Ben Lujan, co-chair, in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Ben Lujan, Co-Chair
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Sen. Dianna J. Duran
Sen. Carroll H. Leavell
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Thomas C. Taylor
Rep. Jeannette O. Wallace

Absent

Sen. Ben D. Altamirano, Co-Chair
Rep. W. Ken Martinez
Sen. Leonard Lee Rawson
Rep. Teresa A. Zanetti

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. H. Diane Snyder

Sen. Stuart Ingle
Sen. Timothy Z. Jennings

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Ric Gaudet, Legislative Council Service (LCS)
Renée Gregorio, Capital Outlay, LCS
Linda Kehoe, Capital Outlay Coordinator, LFC
Jeannae Leger, LFC
Nancy Starkweather, LCS
Paula Tackett, Director, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Friday, August 17

Subcommittee Business

Speaker Lujan welcomed the subcommittee members and guests to the meeting.

Ms. Tackett told the subcommittee that the Legislative Council had created a subcommittee of the council and the LFC in 2006 to focus on developing processes to improve capital outlay. The current Capital Outlay Subcommittee is composed mostly of the same members from last year. Ms. Tackett said that a work plan had been put together by staff, at the direction of the co-chairs, to carry out its charge in 2007. The council approved the work plan at its July 24 meeting. The work plan directs the subcommittee to:

- 1) review "successes" and procedures used during the 2007 legislative session and recommend improvements as needed;
- 2) hear testimony on critical statewide projects to assess statewide needs and prioritize statewide project funding;
- 3) review and improve criteria for and planning and prioritizing of local projects and coordination of these procedures with funding;
- 4) evaluate the current status of project implementation and monitoring for both statewide and local projects; and
- 5) review the reauthorization process and determine if additional restrictions are necessary.

The subcommittee discussed whether five meetings are necessary for the subcommittee's work. The subcommittee agreed to the proposed meeting schedule, noting that the December meeting might be unnecessary if the subcommittee can finish its work at the November meeting.

Status of Project Implementation and Monitoring

Robert Apodaca, director, Local Government Division (LGD) of the Department of Finance and Administration (DFA), gave the subcommittee a brief overview regarding capital outlay monitoring. He provided the subcommittee with a chart that noted the total of all outstanding capital projects funded between 1998 and 2007 and included the following details:

- \$3.0 billion has been appropriated between 1998 and 2007 for 9,508 projects;
- \$2.3 billion, or 76.6%, remains unexpended;
- unexpended balances include \$989.8 million appropriated in 2007 and \$686 million appropriated in 2006; and
- approximately \$201.8 million in authorized severance tax bonds (STBs) remains unissued.

Ms. Kehoe described to the subcommittee the LFC's July 2007 report tracking all capital projects authorized in amounts greater than \$1 million. There are 369 such projects, most of

which are progressing on time. She pointed out several projects that are behind schedule or that need additional funding to complete. The report only deals with large projects and does not address the thousands of projects that were funded under \$1 million.

Mr. Apodaca made three suggestions for the subcommittee to consider:

- 1) strengthen appropriation language in capital outlay bills, which would give clarity and facilitate timely project implementation;
 - 2) provide a reporting tool to assist the executive and legislators in prioritizing projects;
- and
- 3) establish policy guidelines for reversions.

Representative Sandoval said that the legislature tends to fund large projects partially, which leads to projects getting stuck, especially if they have to wait another year for more funding, during which time prices for materials usually increase. He also said that money from finished projects should revert, rather than be reauthorized.

Mr. Apodaca said that appropriations to nonprofit groups have become a problem for the DFA. He said his staff spends much time working with city and county governments trying to make appropriations for nonprofit groups legitimate. Representative Sandoval said that governments that receive money on behalf of a nonprofit group need to tighten up their fiscal agent agreements in order to expedite the process. Speaker Lujan agreed, saying that guidelines for funding nonprofit groups need to be strengthened and strictly enforced. He also said that the legislature should not fund projects for nonprofit groups if those fiscal agent agreements are not entered into.

Representative Saavedra asked why the LFC's spreadsheet listed the new University of New Mexico (UNM) football and soccer facility as being incomplete. Ms. Kehoe said that UNM probably has not requested its final draw-down of funds for the project. Carlos Romero, representing UNM, verified that the facility is complete, but that the university has not yet received a final invoice from the contractor. Ms. Kehoe pointed out that there is usually a delay in agency reporting into the capital outlay monitoring system and that it is the agency's responsibility to report the status of its projects. Mr. Apodaca added that the current capital outlay monitoring system is user-driven. He said that the DFA will be integrating the system into the state's new SHARE financial accounting system within the next two years, which will allow for capital project information to be updated automatically.

Senator Leavell asked what happens to unused STB authorizations. Ms. Kehoe replied that the money reverts back into the Severance Tax Bonding Fund, which increases the following year's bonding capacity.

Representative Moore inquired whether it is possible to give a certain dollar amount for capital improvements to a local government, so it can decide exactly how to spend the money. Mr. Apodaca noted that the language "basic infrastructure improvements" has sometimes been used; however, he said that project managers sometimes have difficulty determining the intent of

the broad language and need to verify whether the money to be spent actually is for a capital outlay project. Ms. Kehoe pointed out that new facilities require specific wording, such as "plan, design and construct"; otherwise, the project would not be allowed to proceed. Representative Moore then asked whether some of the money appropriated to Harding County could also be allocated to the Village of Roy, which is within that county. Ms. Kehoe said that would not be possible.

Senator Smith asked what happens to the interest on money derived from the sale of bonds for projects that are stalled. Mr. Abbey said that all interest earned from the sale of bonds is retained in the state treasury. Senator Smith then asked what could cities and counties, as well as the legislature, do to assist the DFA in tracking the 9,500 projects. Mr. Apodaca responded that one solution would be for the legislature to fund planned projects fully that are part of a governmental entity's Infrastructure Capital Improvements Plan (ICIP). Another big help would be for the legislature not to fund a project for a nonprofit entity until all necessary agreements with the local government have been officially entered into.

Senator Cisneros suggested that a portion of capital outlay appropriations be allowed to be used for administrative costs, which would allow small cities and counties to provide the necessary staff to implement projects.

Senator Sanchez said that there are big funding problems with the governor's highway infrastructure program (GRIP) because many cities and counties are unable to come up with the required matching funds to start projects. Those same governments then ask the legislature to provide the matching funds for projects the legislature has already funded. Senator Smith quipped that a second bite from the same apple does not count as matching funds. He suggested that the subcommittee develop guidelines for the legislature only to fund fully projects that are planned, needed and actually wanted by the local government. Staff was directed to develop a list of proposals for the subcommittee's consideration, including a method to reduce the huge number of small capital outlay appropriations.

Senator Leavell said that the GRIP I and GRIP II programs are already underfunded by \$500 million. He expects heavy pressure on the legislature to fund that shortfall.

Representative Wallace said that some legislators fund a project without consulting with the local government to see if it wants the project. She also said that she ends up funding many projects in small amounts instead of fully funding one project because so many of her communities have dire infrastructure needs.

Representative Arnold-Jones said that supporting documentation must be provided for every claim an entity makes regarding project readiness. She also said that projects need real estimates and budgets before they should be funded. Otherwise, projects should only be funded for the planning phase. Finally, she advocated creating a capital outlay committee as a statutory interim committee to evaluate and prioritize projects.

Senator Cravens suggested that additional staff be hired to assist legislators and the DFA in tracking capital projects to streamline the process and make it more effective. Staff could also assist legislators in selecting projects for potential funding by making sure that proper planning has occurred before funding. Senator Duran noted that the Council of Governments (COG) representative in her district does exactly what Senator Cravens suggested. That particular COG collects and organizes every local governments' requests, assists them in selecting planned projects and in filling out applications and provides legislators with information they need to choose projects. The COG also monitors ongoing projects and acts as a liaison between the local government, the state agency overseeing the project and the legislators in the area.

Senator Sanchez asked about reversion dates for projects. Ms. Kehoe said that, generally, projects for planning, design and construction have five years to spend the money, and equipment and vehicles have two years. She mentioned, however, that the language in capital outlay bills is not being enforced and that capital outlay projects are not audited. Representative Saavedra said that the LGD has not requested additional staff for its increased workload in its recent budgets.

Speaker Lujan asked about arbitrage penalties from interest earned by the state on bonds sold for capital projects. Mr. Abbey said that on every account in which that could be an issue, the State Treasurer does keep track of the interest and the arbitrage limitations set by the Internal Revenue Service. He said that as long as the state spends 85% of the bond proceeds within three years, the state can keep the interest it earns. Otherwise, it may need to pay an arbitrage penalty to the United States government for unfairly earning interest on tax-free bonds. Speaker Lujan said that rather than bothering with dancing around arbitrage issues, the state should instead spend the money the legislature appropriates for capital projects.

Speaker Lujan asked staff to present proposals to the subcommittee to tighten up the way nonprofit entities receive capital outlay funding.

Reauthorization Process: Agency View and Recommendations

Ms. Tackett suggested to the subcommittee that, due to time constraints for upcoming meeting presenters, the subcommittee should discuss reauthorizations and move the other agenda items to the September meeting.

Mr. Apodaca reviewed capital outlay reauthorizations, pointing out that, since 1998, there have been 993 reauthorizations in the amount of nearly \$248 million. He said reauthorizations usually are made in order to extend project reversion dates, to change the scope of projects, to change administering agencies and to sweep funds to other projects. Reauthorization amounts have ranged from as little as \$875 to as much as \$110 million. Mr. Apodaca said that some projects have been reauthorized as many as five times.

Mr. Apodaca suggested the following reforms be made:

- limit reauthorizations of projects to amounts greater than \$50,000;
- allow projects to be reauthorized one time only;

- change the reversion language in the capital outlay bill to remove encumbrance language, so that agencies are not tempted to encumber balances just prior to reversion deadlines; and
- only allow change-in-purpose reauthorizations to change to identified high-priority projects.

Antonio Ortiz, director of capital outlay for the Public Education Department (PED), briefed the subcommittee about the challenges the PED faces in handling the volume of capital outlay funded by the legislature. He said that the PED also wants to change the encumbrance language in the capital outlay bill. He said that although capital outlay project reports often say that many projects have balances, in fact they often do not because school districts encumber the balances and then often do not spend the money for several years. Mr. Ortiz mentioned that the PED received 650 capital outlay appropriations last year but only has three staffers to implement those projects.

Speaker Lujan suggested allowing agencies six months after reversion dates to spend the encumbered money, at which point all unspent money would revert. Ms. Tackett said that reversion language in the capital outlay bills was changed two years ago to remove references to encumbered money. Staff was directed to work with the LGD to refine reversion language further, if necessary, and to investigate the six-month reversion possibility.

Rebecca Martinez, capital outlay manager, Indian Affairs Department (IAD), spoke briefly on processes to help with reauthorization issues being discussed. Ms. Martinez distributed a sample letter sent to tribal entities, which itemized current capital outlay projects and which reminded recipients of various compliance requirements that need to be met. She said that the IAD tracks projects closely to ensure that projects do not lose their funding due to inaction. She said that the IAD did not allow reauthorization requests this past year for amounts under \$10,000. Finally, Ms. Martinez described how unintended capital outlay reversions in Indian country have been significantly reduced over the past three years.

Representative Saavedra asked whether the IAD works only with the Navajo Nation in Window Rock or also works with individual chapters. Ms. Martinez said the department works with both.

Senator Duran asked Ms. Martinez about a delayed project for a domestic violence home for women and children. Ms. Martinez said that the nonprofit entity designated to run the shelter does not have a fiscal agent. The Navajo Nation chose not to be the agent for that project, so the project cannot move forward. She said the department does not get involved in resolving issues that involve tribal sovereignty.

There being no further business, the subcommittee adjourned at 12:50 p.m.